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9

10 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 DONNA SWISHER, P.T.
1682 Kimberly Woods Drive
15 El Cajon, CA 92020

16 Physical Therapist License No. PT 14508

17 Respondent.
18

Case No. 1D-2006-64619

OAH No. 2006110118

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the
21 above-entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical
24 Therapy Board of California. He brought this action solely in his official capacity and is represented
25 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Martin W.
26 Hagan, Deputy Attorney General.

27 2. Respondent DONNA SWISHER, P.T. (Respondent) is represented in this
28 proceeding by attorney John Houts, Esq., of Houts & Houts, whose address is 3131 Fourth Avenue,

3. On or about September 15, 1987, the Physical Therapy Board of California issued Physical Therapist License No. PT 14508 to DONNA SWISHER, P.T. (Respondent). The License was in full force and effect at all times relevant to the charges brought in Accusation No. 1D-2006-64619 and will expire on September 30, 2007, unless renewed.

JURISDICTION

4. Accusation No. 1D-2006-64619 was filed before the Physical Therapy Board of California (Board), and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on December 29, 2006. Respondent timely filed her Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 1D-2006-64619 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1D-2006-64619. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 1D-2006-64619.

4 9. Respondent agrees that her Physical Therapist License No. PT 14508 is
5 subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth
6 in the Disciplinary Order below.

7 **CONTINGENCY**

8 10. The parties understand and agree that facsimile copies of this Stipulated
9 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force
10 and effect as the originals.

11 11. In consideration of the foregoing admissions and stipulations, the parties agree
12 that the Board may, without further notice or formal proceeding, issue and enter the following
13 Disciplinary Order:

14 **DISCIPLINARY ORDER**

15 **IT IS HEREBY ORDERED** that Physical Therapist License No. PT 14508
16 heretofore issued to Respondent Donna Swisher, is revoked. However, the revocation is stayed and
17 the Respondent is placed on five (5) years probation on the following terms and conditions.

18 1. **RESTRICTION OF PRACTICE - ADMINISTRATION OR**
19 **POSSESSION OF CONTROLLED SUBSTANCES** Respondent shall not administer or possess
20 any controlled substances as defined in the California Uniform Controlled Substances Act. This
21 prohibition does not apply to medications lawfully prescribed to respondent for a bona fide illness
22 or condition by a practitioner licensed to prescribe such medications.

23 2. **PROHIBITION OF POSSESSION OR USE OF CONTROLLED**
24 **SUBSTANCES** Respondent shall abstain completely from the personal use or possession of
25 controlled substances as defined by Section 4211 of the Business and Professions Code, or any drugs
26 requiring a prescription. This prohibition does not apply to medications lawfully prescribed to
27 respondent for a bona fide illness or condition by a practitioner licensed to prescribe such

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1 medications. Failure to comply with any component of this condition as specified above is a
2 violation of probation.

3 3. **PROHIBITION OF THE USE OF ALCOHOL** Respondent shall abstain
4 completely from the use of alcoholic beverages. Failure to comply with any component of this
5 condition as specified above is a violation of probation.

6 4. **BIOLOGICAL FLUID TESTING** Respondent shall immediately submit
7 to biological fluid testing, at respondent's cost, upon the request of the Board or its designee. Failure
8 to comply with any component of this condition as specified above is a violation of probation.

9 5. **DIVERSION PROGRAM** Within 15 days from the effective date of this
10 decision, respondent shall enroll and participate in the Board's Diversion Program at Respondent's
11 cost until the Board determines that participation in the Diversion Program is no longer necessary.
12 Failure to comply with requirements of the Diversion Program, terminating the program without
13 permission or being expelled for cause shall constitute a violation of probation by respondent.
14 Failure to comply with any component of this condition as specified above is a violation of
15 probation.

16 6. **PROBATION MONITORING COSTS** Respondent shall reimburse all
17 costs incurred by the Board for probation monitoring during the entire period of probation.
18 Respondent will be billed at least quarterly. Such costs shall be made payable to the Physical
19 Therapy Board of California. Failure to make ordered reimbursement within 60 days of the billing
20 shall constitute a violation of the probation order.

21 7. **COST RECOVERY** The respondent is ordered to reimburse the Board the
22 actual and reasonable prosecutorial costs incurred by the Board in the amount of \$3,480.50. Said
23 costs shall be reduced, however, and the remainder forgiven, if Respondent pays \$1,250.00 within
24 ninety (90) days of the effective date of the Decision. In the event Respondent fails to pay the
25 \$1,250.00 within ninety days (90) days of the Decision, the full amount of costs in the amount of
26 \$3,480.50 shall be immediately due and payable. Failure to pay the ordered reimbursement, or any
27 agreed upon payment, may constitute a violation of the probation order. The filing of bankruptcy
28 by Respondent shall not relieve Respondent of his responsibility to reimburse the Board. If

Respondent is in default of his responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax Board, the Internal Revenue Service or by any other means of attachment of earned wages legally available to the Board. Failure to fulfill the obligation could also result in attachment to the Department of Motor Vehicle registrations and/or license renewals.

8. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws, and statutes and regulations governing the practice, inspections and reporting, of physical therapy in California and remain in full compliance with any court ordered criminal probation.

9. **COMPLIANCE WITH ORDERS OF A COURT** The respondent shall be in compliance with any valid order of a court. Being found in contempt of any court order is a violation of probation.

10. **COMPLIANCE WITH CRIMINAL PROBATION AND PAYMENT OF RESTITUTION** Respondent shall not violate any terms and conditions of criminal probation and shall be in compliance with any restitution ordered, payments or other orders.

11. **QUARTERLY REPORTS** Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

12. **PROBATION MONITORING PROGRAM COMPLIANCE** Respondent shall comply with the Board's probation monitoring program.

13. **INTERVIEW WITH THE BOARD OR ITS DESIGNEE** Respondent shall appear in person for interviews with the Board, or its designee, upon request at various intervals.

14. **NOTIFICATION OF PROBATIONER STATUS TO EMPLOYERS**
The respondent shall notify all present or future employers of the reason for and the terms and conditions of the probation by providing a copy of the Initial Probationary License, Statement of Issues, Accusation and the Decision and Order, or Stipulated Settlement to the employer, and submit written employer confirmation of receipt to the Board within 10 days. The notification(s) shall include the name, address and phone number of the employer, and, if different, the name, address and phone number of the work location.

1 15. **NOTIFICATION OF CHANGE OF NAME OR ADDRESS** The
2 respondent shall notify the Board, in writing, of any and all name and/or address changes within ten
3 (10) days.

4 16. **RESTRICTION OF PRACTICE - TEMPORARY SERVICES**
5 **AGENCIES** The respondent shall not work for a temporary services agency or registry.

6 17. **PROHIBITED USE OF ALIASES** Respondent may not use aliases and
7 shall be prohibited from using any name which is not her legally-recognized name or based upon a
8 legal change of name.

9 18. **INTERMITTENT WORK** If the respondent works less than 192 hours as
10 a physical therapist or a physical therapist assistant in the physical therapy profession in a period of
11 three months, those months shall not be counted toward satisfaction of the probationary period. The
12 respondent shall notify the Board if she works less than 192 hours in a three month period.

13 19. **TOLLING OF PROBATION** The period of probation shall run only during
14 the time respondent is practicing or performing physical therapy within California. If, during
15 probation, respondent does not practice or perform within California, respondent is required to
16 immediately notify the probation monitor in writing of the date that respondent is practicing or
17 performing physical therapy out of state, and the date of return, if any. Practicing or performing
18 physical therapy by the respondent in California prior to notification to the Board of the respondent's
19 return will not be credited toward completion of probation. Any order for payment of cost recovery
20 shall remain in effect whether or not probation is tolled.

21 20. **VIOLATION OF PROBATION** If respondent violates probation in any
22 respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke
23 probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke
24 probation is filed against respondent during probation, the Board shall have continuing jurisdiction
25 until the matter is final, and the period of probation shall be extended until the matter is final.

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1 21. **REQUEST TO SURRENDER LICENSE DUE TO RETIREMENT,**
2 **HEALTH OR OTHER REASONS** Following the effective date of this probation, if respondent
3 ceases practicing or performing physical therapy due to retirement, health or other reasons or is
4 otherwise unable to satisfy the terms and conditions of probation, respondent may request to
5 surrender her license to the Board. The Board reserves the right to evaluate the respondent's request
6 and to exercise its discretion whether to grant the request or to take any other action deemed
7 appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered
8 license, the terms and conditions of probation shall be tolled until such time as the license is no
9 longer renewable, the respondent makes application for the renewal of the tendered license or makes
10 application for a new license.

11 22. **COMPLETION OF PROBATION** Upon successful completion of
12 probation, respondent's license shall be fully restored.

13 23. **CALIFORNIA LAW EXAMINATION - WRITTEN EXAM ON THE**
14 **LAWS AND REGULATIONS GOVERNING THE PRACTICE OR PERFORMANCE OF**
15 **PHYSICAL THERAPY** Within 90 days of the effective date of this decision, respondent shall
16 take and pass the Board's written examination on the laws and regulations governing the practice of
17 physical therapy in California. If respondent fails to pass the examination, respondent shall be
18 suspended from the practice of physical therapy until a repeat examination has been successfully
19 passed.

20 24. **PRACTICE OR PERFORMANCE OF PHYSICAL THERAPY WHILE**
21 **ON PROBATION** It is not contrary to the public interest for the respondent to practice and/or
22 perform physical therapy under the probationary conditions specified in the disciplinary order.

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ACCEPTANCE

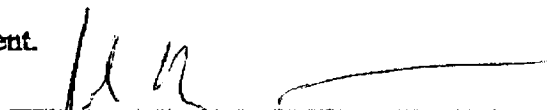
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, John Houts, Esq. I understand the stipulation and the effect it will have on my Physical Therapist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board of California.

DATED: 1/11/07


DONNA SWISHER, P.T.
Respondent

I have read and fully discussed with Respondent DONNA SWISHER, P.T. the terms and conditions and other matters contained in above Stipulated Settlement and Disciplinary Order. I approved its form and content.

DATED: 1/12/07


JOHN HOUTS, ESQ.
HOUTS & HOUTS
Attorney for Respondent

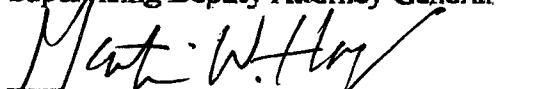
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physical Therapy Board of California.

DATED: 1/12/07

EDMUND G. BROWN JR., Attorney General
of the State of California

THOMAS S. LAZAR
Supervising Deputy Attorney General


MARTIN W. HAGAN
Deputy Attorney General

Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DONNA SWISHER, P.T.
1682 Kimberly Woods Drive
El Cajon, CA 92020

Physical Therapist License No. PT 14508

Respondent.

Case No. 1D-2006-64619

OAH No. 2006110118

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board, as its Decision in this matter.

This Decision shall become effective on _____.

It is so ORDERED _____.

FOR THE PHYSICAL THERAPY BOARD OF
CALIFORNIA, DEPARTMENT OF CONSUMER
AFFAIRS

Exhibit A

Accusation No. 1D-2006-64619

FILED
STATE OF CALIFORNIA
PHYSICAL THERAPY BOARD OF CALIFORNIA

SACRAMENTO *February 2, 2006*
BY *[Signature]* ANALYST

1 BILL LOCKYER, Attorney General
of the State of California
2 THOMAS S. LAZAR
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3 MARTIN W. HAGAN, State Bar No. 155553
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8
9 Attorneys for Complainant

10 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1D-2006-64619

13 DONNA SWISHER, P.T.
1682 Kimberly Woods Drive
14 El Cajon, CA 92020

A C C U S A T I O N

15 Physical Therapist
License No. PT 14508

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

20 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official
21 capacity as the Executive Officer of the Physical Therapy Board of California, Department of
22 Consumer Affairs.

23 2. On or about September 15, 1987, the Physical Therapy Board of California
24 issued Physical Therapist License No. PT 14508 to DONNA SWISHER (Respondent). The
25 Physical Therapist License was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2007, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

"The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter."

5. Section 2660 of the Code states, in pertinent part:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"...

"(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

"...

"(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

"..."

6. Section 2661 of the Code states, in pertinent part:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a

1 conviction within the meaning of this article. The board may order the license
2 suspended or revoked, or may decline to issue a license, when the time for appeal has
3 elapsed, or the judgment of conviction has been affirmed on appeal or when an order
4 granting probation is made suspending the imposition of sentence, irrespective of a
5 subsequent order under Section 1203.4 of the Penal Code allowing that person to
6 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
7 verdict of guilty, or dismissing the accusation, information, or indictment."

8 7. Section 2239 of the Code states, in pertinent part:

9 "The use of . . . alcoholic beverages, to the extent, or in such a manner
10 as to be dangerous or injurious to the licensee, or to any other person or to the public,
11 or to the extent that such use impairs the ability of the licensee to practice medicine
12 safely or more than one misdemeanor or any felony involving the use of any of the
13 substances referred to in this section . . . constitutes unprofessional conduct. The
14 record of the conviction is conclusive evidence of such unprofessional conduct."

15 8. California Code of Regulations, title 16, section 1399.20, states, in pertinent
16 part:

17 "For the purposes of denial, suspension or revocation of a license, pursuant
18 to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
19 considered to be substantially related to the qualifications, functions or duties of a
20 person holding a license under the Physical Therapy Practice Act if to a substantial
21 degree it evidences present or potential unfitness of a person to perform the functions
22 authorized by the license or approval in a manner consistent with the public health,
23 safety or welfare. Such crimes or acts shall include but not be limited to the
24 following:

25 "(a) Violating or attempting to violate, directly or indirectly, or assisting in
26 or abetting the violation of, or conspiring to violate any provision or term of the
27 Physical Therapy Practice Act.

28 "...

1 "(c) Violating or attempting to violate any provision or term of the Medical
2 Practice Act."

3 COST RECOVERY

4 9. Section 2661.5 of the Code states, in pertinent part:

5 "(a) In any order issued in resolution of a disciplinary proceeding before the
6 board, the board may request the administrative law judge to direct any licensee
7 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
8 actual and reasonable costs of the investigation and prosecution of the case...."

9 FIRST CAUSE FOR DISCIPLINE

10 (Conviction of a Crime)

11 10. Respondent is subject to disciplinary action under section 2660, as defined
12 by sections 2239, 2660(d), and 2660(i) of the Code in that she was convicted of crimes substantially
13 related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant.
14 The circumstances are as follows:

15 The 2006 Conviction

16 A. On or about November 13, 2005, Respondent was involved in
17 a traffic collision. Upon contact with Respondent, the officer noticed that
18 Respondent's eyes were watery and red and that her speech was extremely slurred.
19 Respondent admitted taking Valium throughout the day and consuming alcohol that
20 evening. When the officer administered field sobriety tests, Respondent failed to
21 perform the tests properly. Respondent was subsequently arrested for driving under
22 the influence.

23 B. On or about December 9, 2005, a Complaint was filed in
24 Superior Court of California, County of San Diego, charging Respondent with one
25 count of driving under the influence of alcohol and a drug and under their combined
26 influence in violation of Vehicle Code section 23152(a); one count of driving while
27 having a measurable blood alcohol, in violation of Vehicle Code section 23152(b);
28 and one count of failure to provide evidence of financial responsibility.

1 C. On or about January 25, 2006, in the case entitled *The People*
2 *of the State of California v. Donna Jean Swisher*, Case No. C256693, before the
3 Superior Court of California, County of San Diego, East County Division,
4 Respondent was convicted on her own guilty plea of one count of driving a vehicle
5 while under the influence of an alcoholic beverage (with a prior) in violation of
6 Vehicle Code section 23152(a) with a blood alcohol content of .13%. As a result of
7 the conviction, Respondent was ordered to serve four days in county jail (with 361
8 days of custody suspended with successful completion of probation), granted
9 summary probation for the period of five years, and ordered to comply other terms
10 and conditions.

11 1999 Conviction

12 D. On or about March 7, 1999, while out with friends,
13 Respondent drank alcoholic beverages then attempted to drive. She was stopped by
14 the police, tested, failed the tests and was subsequently arrested for driving under the
15 influence.

16 E. On or about March 17, 1999, a Complaint was filed in
17 Superior Court of San Diego, County of San Diego, charging Respondent with one
18 count of driving a vehicle while under the influence of an alcohol beverage or a drug
19 or under their combined influence, in violation of Vehicle Code section 23152(a);
20 and one count of driving while having a measurable blood alcohol in violation of
21 Vehicle Code section 23152(b).

22 F. On or about April 7, 1999, in the case entitled *The People of*
23 *the State of California v. Donna Jean Swisher*, Case No. T-207035, before the
24 Superior Court of California, County of San Diego, Respondent was convicted on her
25 own guilty plea of one count of driving a vehicle while under the influence of an
26 alcoholic beverage in violation of Vehicle Code section 23152(a) with a blood
27 alcohol content of .22%. As a result of the conviction, Respondent was granted
28 summary probation for the period of five years with terms and conditions.

